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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 384

CORNELL STEAMBOAT COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and NATIONAL WATER CARRIERS ASSOCIATION, INC.,

Appellees.

No. 385

BOSTON TOW BOAT COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and NATIONAL WATER CARRIERS ASSOCIATION, INC.,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF NATIONAL WATER CARRIERS ASSOCIATION, INC.

JAMES A. MARTIN

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In the

Supreme Court of the United States

October Term, 1943

No. 384

Cornell Steamboat Company, Appellant,

v.

The United States of America, Interstate Commerce Commission, and National Water Carriers Association, Inc.,

Appellees.

No. 385

Boston Tow Boat Company, Appellant,

v.

The United States of America, Interstate Commerce Commission, and National Water Carriers Association, Inc.,

Appellees.

BRIEF ON BEHALF OF NATIONAL WATER CARRIERS ASSOCIATION, INC.

Introduction

National Water Carriers Association, Inc., (formerly Atlantic Coastwise and Inland Water Carriers Association, Inc., the corporate name of which was changed to the present name in accordance with the Laws of the State of New York), is a non-profit sharing association

incorporated under the laws of the State of New York, whose members consist of persons, firms and corporations engaged in the transportation of goods for hire by water. Many of its members have business relations with the appellant Cornell, and will be affected by the Court's decision on the questions of law involved; furthermore the construction of various sections of Part III of the Interstate Commerce Act (U. S. C. Title 49 §§ 901-923 inclusive) necessary to a decision of these appeals, is a matter of nationwide interest to all water carriers.

Atlantic Coastwise and Inland Water Carriers Association, Inc., was permitted to and did intervene in the proceedings before Division 4 of the Interstate Commerce Commission (R-24), and in the reargument before the full commission (R-45), pursuant to which an order and certificate as a common carrier by water by towing vessels was issued to the appellant Cornell (R-58); and (its name meanwhile having been changed) likewise was permitted and did intervene (R-66; Footnote R-128) in the trial and argument of said appellant's suit to enjoin, set aside, suspend and annul the said certificate, before a three-judge statutory court in the Southern District of New York, in which action the appellant Boston Tow Boat Company was permitted to and did intervene (R-68) and which resulted in the opinion of said court (R-123), its findings of fact and conclusions of law (R-134), and in a final decree and judgment dismissing the petition (R-136), entered on August 2nd, 1943.

These appeals are before this Court on assignment of error in the opinion, findings, conclusions and judgment of said statutory court (R-139).

This Association before Division 4 of the Interstate Commerce Commission, and on the reargument before the full Interstate Commerce Commission, and before the Court below, took direct issue with every contention of the appellant Cornell Steamboat Company here, namely,

the association contended that in towing non-self propelled barges on the Hudson River, the Cornell Steamboat Company is, within the meaning of Part III of the Interstate Commerce Act, a water carrier; that it was and is "a common carrier by water" within the meaning of Subdivision (d) of Section 302 and not a "contract carrier by water" within the meaning of Subdivision (e) of said Section; and that such towing service on the Hudson River is in Interstate Commerce; and in the following points in this brief it reiterates and adheres to its former position on these issues.

POINT I

Answering the First Point of Appellant Cornell Steamboat Company.

Whether or not a tower has the liabilities of a "carrier" under the common law or general maritime law, is beside the point; appellant was and is a "carrier" in fact, within the limited definition of this statute and as such subject to regulation by Congress, regardless of its "liabilities" as a carrier.

It was not questioned in *Washington ex rel., Stimson Lumber Co.* v. *Kuykendall*, 275 U. S. 207, but that the towage there involved constituted "carriage", the contention of the towing companies there being that the private (i.e. contract) "carriage" performed by plaintiff in towing logs on Puget Sound was not subject to regulation as "common carriage"; it is implicit in the opinion of this Court that such towage of logs is "carriage". The opinion states (p. 211):

> "Large quantities of logs are floated from the forests to the mills. Tow boats are commonly used for that purpose. In all essential particulars that service is like the carriage of freight in vessels."

It seems obvious that had this Court been of the opinion that the towage there involved was not "carriage", or transportation of any kind, that would have disposed of the matter without the further inquiry as to whether or not it was "common carriage."

Assuming for the moment that Congress can no more declare an act to be "contract" or private carriage (if the result is to impose undue burdens in new liabilities on such a carrier), than it can declare that to be "common carriage" (with like purpose and result of imposing undue burdens and liabilities), nevertheless Congress (or the States where they have jurisdiction) may reasonably regulate either class of transportation, provided such regulation does not impose undue burdens on the carrier or enlarge his liability beyond that of the common or maritime law.

In the *Kuykendall* case *supra*, this Court stated (p. 211) that "a private carrier cannot be converted into a common carrier by mere legislative command" citing *Frost & F. Trucking Co.* v. *Railroad Commission*, 271 U. S. 583, and *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570.

To determine what this Court meant in that case by the brief statement in the opinion to the effect that a private carrier cannot be "converted into a common carrier" by mere legislative "command", it is necessary to examine the basis for that statement in the cases which this Court cited in support of the proposition.

For example, in the first case so cited (*Frost & F. Trucking Co.* v. *Railroad Commission, supra*) plaintiffs in error were engaged under a single private contract in transporting for compensation fruit over the public highways of California between fixed termini. The California statute in question defined the term "transportation company" to mean "a common carrier for compensation over any

public highways between fixed termini or over a regular route." The Statute prohibited the operation by any person or corporation of any automobile, truck, etc., "for the transportation of persons or property as a common carrier for compensation on any public highways in the state * * * unless a permit to operate" as such common carrier has been secured. In other words it prohibited the use of the public highways except by and as "a common carrier". There was no statutory limitation on the definition of "common carrier", making it inevitable for those who enjoyed common law immunity from liability as private carrier, to surrender it and for the sake of securing the right to use the public highways, to consent first, to become burdened with the full liability of a common carrier at common law, and second to regulation as such. As we presently show in an extract from the opinion in that case, it was those two conditions which this court condemned as destructive of the rights of the "private" carriers.

An examination of those cases shows that this Court recognized the distinction between "reasonable regulation" and legislation which is in substance destructive of property rights.

The opinions of this Court in both cases are implicit to the effect that reasonable "regulation" by the State of the use of its highways by a private carrier would be unobjectionable, provided no undue burdens or new "liabilities" are thereby imposed.

In the *Frost* case, this Court said (pp. 591-592):

> "It is very clear that the act, as thus applied, is in no real sense a regulation of the use of the public highway. * * * In other words the case presented is not that of a private carrier who, in order to have the privilege of using the highways, is required merely to secure a certificate of public convenience and become subject to regulations appropriate to that kind of a

> carrier; but it is that of a private carrier who, in order to enjoy the use of the highways, must submit to the condition of becoming a common carrier and of being regulated as such by the railroad commission * * *."

It may be inferred reasonably from this that Congress had the power to require under Part III of the Interstate Commerce Act, those who were or are private carriers (or as they are called in this statute, "contract" carriers) in order to have the privilege of using navigible waters in interstate commerce, to secure merely a "permit" on reasonable terms under the act—which permit cannot be denied to one who was a contract carrier on January 1st, 1940.

There seems to be no doubt that Congress has power to impose reasonable regulations even on "contract" carriers. (*Fordham Bus Corporation* v. *United States,* 41 Fed. Supp. 712, 715 and authorities cited.)

Contrary to the implication sought to be conveyed in said appellant's brief (p. 16) that the definitions of "common" and "contract" carriers in Part III are the same as at common law, it is evident that they are not. In the report of the full Interstate Commerce Commission on January 3rd, 1944 in the case of *Columbia Transportation Company Application,* Docket No. W-773, Vol. —— I. C. C. reports page —— (not yet published) the commission specifically held:

> "* * * there is a specific definition of the term 'common carrier' in part III of the act, which in our judgment modifies the common-law version of a common carrier. * * *"

Appellant also seeks to imply (brief, p. 16) that the definition "carrier by water" in Part III includes what it considers to be an essential part of that definition under

the common or maritime law, namely, the "liabilities" of such a carrier; but such is not the case.

It is as well to understand at the outset that the definitions of "water carrier", "common carrier by water" and "contract carrier by water" in this statute fall far short of including therein what appellant claims to be an essential part of the common law or the maritime law definition of either such carriers. The pertinent definitions which by the express terms of the statute are only "for the purposes of this act" are contained in subdivisions (c), (d) and (e) of Section 302, printed in the Appendix.

Taking the first question raised in the brief of said appellant (Point I) that it is not even a "contract carrier by water" because under the common and maritime law it did not have the "liabilities" of such a carrier, it is evident that the statutory definition in subdivision (e) purposely omits any element of "liability"; i.e., under said subdivision (e) for the purpose of this statute, a "contract carrier by water" means simply "any person which, under individual contracts or agreements, engages in the *transportation* (other than transportation referred to in paragraph (d) and the exception therein) by water of passengers or property in interstate or foreign commerce for compensation".

Passing for the moment the question considered later (Point II) as to whether or not Appellant is a "common carrier by water", if it were not, it was and is at least actually a "contract" carrier because actually and under the common and maritime law engaged in the exact kind of "transportation" defined in said subdivision (e).

Appellant loses sight of the fact that a "carrier" whether contract or common, is such "by virtue of his occupation" and not by virtue of "the responsibilities" under which he rests. (The *Kuykendall* case, *supra*, as quoted under Point II.)

Appellant argues that as it has the common law liability of neither a contract nor a common carrier by water, it may not be classified as either, even for the purpose of reasonable regulation.

But the status for regulation or other purpose, of a contract or a common carrier, does not depend on the liabilities it assumes or which the common law imposes on it, but on what *it does*.

Once it is found that it was and is a "carrier by water", either contract or common (as those terms are defined in this statute) it comes within the purely regulatory provisions of this statute.

It is not forced against its will to assume the liabilities of a contract or a common carrier by water at common law, as a condition to its use of navigable waters in interstate commerce, nor does this statute thrust such liabilities upon it.

The opinion of this Court in the *Kuykendall* case pointed out that the rule that towboats not having exclusive control of the vessels towed "are not to be held to the strict liability of common carrier" did not affect the question there under consideration (i.e. one of reasonable regulation).

So as to a "contract" carrier, it may be said that the question of the "liability" of towboats or owners, under the common or maritime law "does not affect the question" under consideration in this point—which is one of reasonable regulation of any person who, under individual contracts or agreements, engages in the "transportation" by water of passengers or property in interstate or foreign commerce for compensation (without regard to the liabilities of the person so engaged).

Appellant attempts to distinguish the *Kuykendall* case pointing out that the towing companies there involved carried the logs, "by attaching their tugs' lines to the floating rafts or clusters."

But there is sound authority for the proposition that even towing "vessels", with or without cargo is "transportation."

In *Matter of Newtown Creek Towing Co.* v. *Law*, 205 A. D. 209, affirmed 237 N. Y. 578, it was held that plaintiff engaged in the business of towing vessels in the Hudson River was engaged in "transportation" within the meaning of Section 184 of the New York Tax Law as amended by Chapter 334, Laws of 1914, which imposed an excise tax on certain corporations and on "every other transportation corporation" (with certain exceptions not here relevant). In the opinion of the Appellate Division it is stated (p. 211):

> "This question is not to be solved by deciding whether or not the steam towboat is a common carrier (*Wells* v. *Steam Navigation Co.*, 2 N. Y. 204; *Alexander* v. *Greene*, 3 Hill, 9 or whether such towboat is required, in the handling of a tow, to exercise ordinary and reasonable care or the greatest care of which human foresight is capable (*Caton* v. *Rumsey*, 13 Wend. 389), but by deciding whether towing is transporting or an agency or means by which transportation is affected. (*Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S. 213). For if towing be transporting then the petitioner comes within the description of the statute, "every other transportation corporation," and should claim no favor or immunity not enjoyed by corporations organized under the Transportation Corporations Law.
>
> "The derivation of the English word 'transport' is in the Latin tongue 'trans', signifying over, and 'portare', signifying to carry. Transport has been defined in the law by the English word 'remove'. (38 Cyc. 946; *Columbia Conduit Co.* v. *Commonwealth*, 90 Penn. St. 309.)
>
> "It seems to me that since the result of transportation in the instant case is not accomplished except by the use of a steam tugboat such tugboat is engaged in transportation, doing business in part at least of transporting. * * *"

> "Upon the record the case of *People ex rel., Cornell Steamboat Co.* v. *Sohmer* (206 N. Y. 651) is on all fours with the case at bar. It constitutes authority for holding a corporation organized under the Business Corporation Law and its antecedent statutes to be a transportation corporation within the language of Section 184 of the Tax Law."

The case of *People ex rel., Cornell Steamboat Company* v. *Sohmers* cited in the above quotation, was affirmed in this Court (235 U. S. 549). The relator in that case (the appellant Cornell here) does not seem to have questioned that the towing business in which it was engaged on the Hudson River was "transportation" within the meaning of said Section 184 of the New York Tax Law. The opinion of this Court in that case described the towing activities of the *Cornell Steamboat Company* on the Hudson River substantially as in the record of this case. In its opinion this Court said (235 U. S. 558):

> "It is apparent from a consideration of Section 184 that the tax here imposed upon transmission and transportation corporations is for the privilege of carrying on the business in a corporate capacity within the State of New York, for which an annual excise tax or license fee is exacted equal to 5/10 of 1 per centum upon the gross earnings on transportation originating and terminating in the State of New York."

It seems plain from the *Newtown Creek Towing Co.* and the said *Cornell Steamboat Company* cases that if in fact those respective companies had not at the times in question been engaged in "transportation", they could not be made so even for taxation purposes, by a mere statutory declaration that they were.

It will be noted that neither in the *Newtown Creek Towing Co.* case nor in the *People ex rel. Cornell Steamboat Company* case did the question as to whether or not the towboat companies there involved were engaged in

"transportation" depend at all on their "liabilities" in conducting such transportation.

There was added to the Internal Revenue Code (U. S. C. Title 26) in 1942 a new section, viz, number 3475, which as far as now relevant, imposed a tax upon the amount paid within the United States after the effective date of the section, for the "transportation" of property by rail, motor vehicle, water or air from one point in the United States to another. Former income tax laws had imposed a somewhat similar "transportation" tax; but neither under the present statute nor under the earlier ones is the question as to whether or not the activity was one of "transportation" made to depend upon the "liability" of the carrier.

Appellant and Boston Towboat Company, intervenor, make much of the point that as "towage" or "Towing" is not expressly included in any of the definitions of "transportation" or of a transportation "facility" under Part III, and that it cannot be brought in as "transportation" by the express exception of certain kinds of "towage" under Section 303 (f) (2). It may be conceded that if towage does not come within the broad definition of "transportation by water" or if the definition of transportation "facility" therein (both definitions being read in the light of the legislative history of the statute) were not broad enough to include towage and a towing tug, that an exception excluding certain kinds of towage could not have the effect of including towage.

But it seems quite clear that the definitions of "transportation" and of transportation "facility" are broad enough to include towage in general, thus instead of rendering the exception meaningless, as had been argued, making it apt and confirming the meaning of the prior broad definitions of "transportation" and transportation "facility". (*St. John* v. *American Mutual Fire & Marine Insurance Company*, 11 N. Y. 516, 519).

As is very clearly shown in the present brief of the United States and the Interstate Commerce Commission (pp. 24-26; 30-31) the legislative history of this statute shows that the precise form of towage which appellant now contends was not intended to be regulated, was one of the principal activities deemed in need of regulation.

It is submitted that appellant's have no present valid objection to this statute. Not only does it not enlarge the tower's liability beyond what it was under the common or maritime law, but it contains express provisions by which we submit, the tower's liability may be limited, in the filed schedules or tariffs, in accordance with the common or maritime law.

While under Section 20, paragraph 11 of Part I of the Act, and by Section 219 of Part II, the rights of common carriers by railroad and by motor truck, respectively, to limit their liability is substantially restricted, there is no corresponding restriction in Part III of the right of a common carrier by water subject to that Part to limit its liability.

It is submitted that under Section 306 (see Appendix) Subdivision (e) any "contract carrier by water" may by appropriate rules or regulations in its filed schedules, and under subdivision (a) any "common carrier by water" by like rules or regulations in its filed tariffs, may suitably limit its liability in accordance with the common or maritime law.

It will be noted that the statute contains no limitation as to the subject matter which such rules and regulations filed by a common or contract carrier, shall contain.

Not until the Interstate Commerce Commission disapproves of any such rule or regulation of appellant or any other tower, will they have any ground to complain that their "liabilities" are enlarged by this statute.

POINT II

Answering the Second Point of said appellant.

The implication of the second point of the brief of said appellant is that Congress, by this statute, has converted independent towers into common carriers with all the liability of common carriers under the common or maritime law.

No such attempt is made under this statute.

The question, in truth, is whether or not towing companies which have held and now hold themselves out to the public at large to perform towage service for hire, regardless as to whether or not they assume the "liabilities" incident to that of a common carrier under the common or maritime law, may be subject to reasonable regulation, which imposes no undue burden and adds no new liabilities.

For a common carrier to be subject to reasonable regulation it is not necessary that its activities be such as to make it subject to the "liabilities" of a common carrier under the common or maritime law. A carrier may be a "common carrier" for the purpose of reasonable regulation even though the elements (in addition to its holding out to the public to perform the services for hire) of exclusive possession and control of the thing transported are not in the carrier; further its status as a common carrier is not determined by the "responsibilities" (*i. e.* liabilities) under which it rests, but by what it does. As was said by this court in *Washington, ex rel. Stimson Lumber Co.* v. *Kuykendall*, 275 U. S. 211:

> "• • • The statute does not attempt to make all towboats common carriers. Its application is limited to those operated in the public use for hire. The rule that towboats not having exclusive control of vessels towed are not to be held to the strict liability of common carriers (citing cases in a foot note) does

not affect the question under consideration. And the notice in the tariff that all tows are at owner's risk is immaterial. 'A common carrier is such by virtue of his occupation not by virtue of the responsibilities under which he rests'. (Liverpool & G. W. Steam Co. v. Phenix Ins. Co. (The Montana), 129 U. S. 397, 440)".

In the case of *Liverpool and Great Western Steam Co.* v. *Phenix Ins. Co.* cited in the above quotation, it is evident that this court in order to ascertain whether or not "The Montana" was a common carrier did not first inquire as to the "liabilities" which she assumed at law or under the bills of lading, but what she and her owners in fact did.

It was only after having found that the vessel was a common carrier having exclusive possession and control of the goods carried, that this court proceeded to determine the nature and extent of her liability.

There the test was: Did the Montana hold herself out to the public in general to carry goods for hire? It was only when that question was disposed of that the subject of the vessel's liability arose.

Here the test is: Did the towboat company hold itself out to the public in general to perform transportation (i. e., towage—see Point I) for hire? If so, it is subject to reasonable regulation; the question of tower's liability as a carrier, common or otherwise, is not involved.

We think that on the subject of the holding out by appellant to "the general public" to perform transportation services (i. e., towage) for hire, with the result that it was and is a "common" carrier, within the meaning of this statute, nothing need be added to what is said in the opinion below (Record, p. 131).

It may be conceded that had this statute attempted under the guise of regulation to impose the burdens or lia-

bilities "of common carriers by water" on such a company, without defining the term, it would be ineffective, unless, in fact, the company was a common carrier within the meaning of the common or maritime law (*Frost & F. Co.* v. *Railroad Commissioner*, 271 U. S. 583).

It is submitted that this statute makes no such attempt; under Part III the carrier is not made a "common carrier by water" for all purposes, nor is it required to become one; no new "liability" is imposed upon it; as the court below said (fol. 231, R. p. 130):

> "* * * By labeling persons such as plaintiff 'common carriers' in this Act, they do not become such for all purposes; this is made clear by Section 302 which, in so labeling them, expressly states that it does so 'for the purpose of this act.' And see *Stimson Lumber Co.* v. *Kuykendall*, 275 U. S. 199, 211-212; *United States* v. *Brooklyn Terminal*, 249 U. S. 296, 304; *Liverpool Steam Company* v. *Phenix Insurance Co.*, 129 U. S. 397, 440."

POINT III

Answering the Third and Fourth Points of the said Appellant.

We think that said appellant's Third Point has been sufficiently answered under Points I and II of this brief; we wish merely to add in connection with the said Third Point that it seems evident that a "Wharfinger" which operates nothing on water and has no connection with such operation, is not a "carrier by water". Its position is scarcely analogous to plaintiff's operation of powerful self-propelled tugs.

We submit that said appellant's Point Four has been sufficiently answered in the preceding Points of this brief, and in the opinion below (Record, p. 130, fol. 232).

POINT IV

Answering the said Appellant's Fifth Point.

That the said appellant's towage between places in New York State is interstate, we submit is already clearly established by the reasoning of the opinion below (Record, pp. 131-133), and in the present brief of the United States and the Interstate Commerce Commission (Point II); to add to either seems unnecessary.

POINT V

Answering the said Appellant's Sixth Point.

This has already been answered in Point II of this brief, and more at length in Point I, subdivision B of the brief of the United States and the Interstate Commerce Commission—all to the effect that the said appellant was properly classified as a "common carrier by water" rather than a "contract" carrier.

POINT VI

Answering the brief of the Boston Tow Boat Company.

As the appellant Boston Tow Boat Company in its brief takes substantially the same position on the matters which concern it, as is taken by the appellant Cornell Steamboat Company, it would seem to serve no useful purpose in repeating in answer thereto what has been said herein in answer to the brief of the Appellant Cornell.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the decree of the District Court should in all respects be affirmed.

Respectfully submitted,

JAMES A. MARTIN

Dated: February 1944.

Appendix

Definitions.

Section 302 (Added September 18, 1940) (U. S. Code, Title 49, chapter 12, Sec. 902) For the purposes of this chapter—

(a) * * * * *

(b) * * * * *

(c) The term "water carrier" means a common carrier by water or a contract carrier by water.

(d) The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except transportation by water by an express company subject to chapter I of this title in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to chapter I of this title.

(e) The term "contract carrier by water" means any person which, under individual contracts or agreements engages in the transportation (other than transportation referred to in paragraph (d) and the exception therein) by water of passengers or property in interstate or foreign commerce for compensation.

Tariffs and Schedules.

Section 306 (Added September 18, 1940). (U. S. Code, Title 49, Section 906.) (a) Every common carrier by water shall file with the Commission and print, and keep open to public inspection tariffs showing all rates, fares, charges, classifications, rules, regulations, and practices for the transportation in interstate or foreign commerce of passengers and property between places on its own route, and between such places and places on the route of any other such carrier or on the route of any common carrier by railroad or by motor vehicle, when a through

route and joint rate shall have been established. Such tariffs shall plainly state the places between which property or passengers will be carried, the classification of property or passengers and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates, fares, or charges, or the value of the service rendered to the passenger, shipper, or consignee.

* * * * * * * * *

(e) It shall be the duty of every contract carrier by water to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith and to establish and observe reasonable regulations, and practices to be applied in connection with said reasonable minimum rates and charges. It shall be the duty of every contract carrier by water to file with the Commission, post, and keep open for public inspection, in accordance with such rules and regulations as the Commission shall prescribe, schedules of minimum rates or charges actually maintained and charged for interstate and foreign transportation to which it is a party, and any rule, regulation, or practice affecting such charges and the value of the service thereunder. No contract carrier by water, unless otherwise provided by this chapter, shall engage in transportation subject to this chapter unless the minimum rates or charges actually maintained and charged have been published, filed, and posted in accordance with the provisions of this chapter. No new rate or charge shall be established and no reduction shall be made in any rate or charge, either directly or by means of any change in any rule, regulation, or practice affecting such rate or charge, or the value of service thereunder, except after thirty days' notice of the proposed new rate or charge, or of the proposed change, filed in accordance with this section. The commission may, in its discretion and for good cause shown, allow the establishment of any such new rate or charge, or

any such change, upon notice less than herein specified, or modify the requirement of this section with respect to posting and filing of such schedules, either in particular instances or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the new rate or charge, or the change proposed to be made, and the time when it will take effect. It shall be unlawful for any such carrier to transport passengers or property or to furnish facilities or services in connection therewith for a less compensation, either directly or by means of a change in the terms and conditions of any contract, charter, agreement, or undertaking than the rates or charges so filed with the Commission: PROVIDED, That the Commission, in its discretion and for good cause shown, either upon application of any such carrier or carriers, or any class or group thereof, or upon its own initiative may, after hearing, grant relief from the provisions of this subsection to such extent, and for such time, and in such manner as, in its judgment, is consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act.